

Serial Number 10/015,365
Attorney Docket No. IMPLEX-18/ZM0718

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REMARKS

1. Claims 1, 3, 5-7, 9-13, 15-17, 19-21, 23, 25-27, 29-33, 35-37 and 39-46 are pending.

Claims 1 and 11 have been amended.

Reconsideration of this application is respectfully requested.

2. Claims 1, 3, 10, 11, 13, 20, 21, 23, 30, 31, 33, 40, 45 and 46 stand rejected under 35

U.S.C. § 102(e) as anticipated by U.S. 6,482,233 to Aebi et al. (Aebi).

Independent claim 1 and 11 have been amended to recite the "undercut" limitation as a structural feature:

"... a first plurality of teeth extending across the upper surface of the body, the first plurality of teeth all disposed in a first plane, the first plurality of teeth angling back toward the anterior end of the body, to provide each of the teeth with including an undercut;
a second plurality of teeth extending across the lower surface of the body, the second plurality of teeth all disposed in a second plane, the second plurality of teeth angling back toward the anterior end of the body, to provide each of the teeth with including an undercut"

Independent claims 21 and 31 recite:

"... wherein the first and second plurality of ratcheting teeth are angled back toward the anterior end of the body to define a plurality of undercut surfaces."

Independent claims 45 and 46 recite:

"... wherein the first and second plurality of teeth are angled back toward the anterior end of the body, thus creating an undercut surface associated with each of the teeth."

Aebi does not anticipate the subject matter of independent claims 1, 11, 21, 31, 45 and 46 because Aebi fails to disclose every limitation of the claims, as required by 35 U.S.C. § 102(e).

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Specifically, Aebi fails to disclose, either expressly or inherently, the “undercut” limitation of each of these claims. Rather, the Aebi patent shows pyramidal shaped teeth (spikes) 28, stating “[t]he anterior side of each spike is preferably slanted at an angle B which may preferably range from about 0° to about 30°. In a preferred embodiment, angle B is about 10 ° relative to the vertical. (See the Aebi patent, col. 4, lines 39-42 and Figs. 4, 6 and 7).

The claimed undercut - illustrated in Figures 4-6 and identified by the “hook angle” θ s in Figures 5 and 6 of the instant application - is missing from Aebi. Specifically, the Aebi teeth are, at most, perpendicular to the axis of the spacer 10, (see the Aebi patent, col. 4, line 41 describing FIG. 6), and thus have no such undercut. Contrary to the Examiner, the side views of FIGS. 4 and 6 and the end view of FIG. 7 clearly show that the Aebi teeth do not have an undercut.

Thus, claims 1, 11, 21, 31, 45 and 46 are allowable over Aebi. Claims 3, 10, 13, 20, 23, 30, 33 and 40, which depend from claims 1, 11, 21 and 31 and recite additional features of the invention, are allowable over Aebi at least the same reasons as stated for the independent claims.

In view of the foregoing, withdrawal of the rejection of claims 1, 3, 10, 11, 13, 20, 21, 23, 30, 31, 33, 40, 45 and 46 under 35 U.S.C. § 102(e) is respectfully requested.

3. Claims 9, 19, 29 and 39 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Aebi. Claims 9, 19, 29 and 39 depend from independent claims 1, 11, 21 and 31, and thus contain all of the limitations of their respective independent claims.

For the same reasons as stated above in regard to the non-anticipation of the independent claims by Aebi, claims 9, 19, 29 and 39 are believed to be patentable over Aebi. Specifically, Aebi fails to disclose, teach or suggest the “undercut” limitation recited in each of the claims.

In view of the foregoing, withdrawal of the rejection of claims 9, 19, 29 and 39 under 35

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U.S.C. § 103(a) is respectfully requested.

4. Claims 5-7, 15-17, 25-27, 35-37 and 41-44 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Aebi in view of U.S. 5, 989,289 to Coates et al. (Coates). Claims 5-7, 15-17, 25-27, 35-37 and 41-44 depend from independent claims 1, 11, 21 and 31, and thus contain all of the limitations of the respective independent claims. For the same reasons as stated above in regard to the non-anticipation of the independent claims by Aebi, claims 9, 19, 29 and 39 are believed to be patentable over Aebi. Specifically, Aebi fails to disclose, teach or suggest the “undercut” limitation recited in each of the claims.

Coates fails to remedy this deficiency, because, like Aebi, it discloses teeth that are perpendicular to the axis of the spacer. Specifically, Coates states “the first face 355 defines an angle $\alpha 1$ no more than about 90°. In other words, the first face 355 is preferably perpendicular to the engaging surface 337. (See Coates, col. 3, lines 56-61; col. 10, lines 49-53; and Figs. 17-20). Thus, Coates fails to disclose, teach or suggest the “undercut” limitation recited in each of the claims.

In view of the foregoing, withdrawal of the rejection of claims 5-7, 15-17, 25-27, 35-37 and 41-44 under 35 U.S.C. § 103(a) is respectfully requested.

5. Claims 12 and 32 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Aebi in view of U.S. Patent Application Publication 2003/0014113 to Ralph et al. (Ralph). Claims 12 and 32 depend from independent claims 11 and 31, respectively, and thus contain all of the limitations of the respective base claim.

As stated above, Aebi fails to disclose, teach or suggest all of the limitations of

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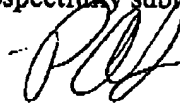
independent claims 11 and 31. Specifically, it fails to disclose the "undercut" limitation recited in both of those independent claims. Ralph fails to remedy this deficiency, because Ralph does not disclose teeth at all in relation to the top and bottom surfaces of its spacers.

In view of the foregoing, withdrawal of the rejection of claims 12 and 32 under 35 U.S.C. § 103(a) is respectfully requested.

6. Favorable reconsideration of this application is respectfully requested as it is believed that all outstanding issues have been addressed herein and, further, that claims 1, 3, 5-7, 9-13, 15-17, 19-21, 23, 25-27, 29-33, 35-37 and 39-46 are in condition for allowance. Should there be any questions or matters whose resolution may be advanced by a telephone call, the examiner is cordially invited to contact the undersigned attorney at his number listed below.

7. The Commissioner is hereby authorized to charge any additional filing fees required under 37 CFR 1.16 and any patent application processing fees under 37 CFR 1.17, which are associated with this paper, or credit any overpayment, to Deposit Account No. 04-1679.

Respectfully submitted,



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